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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCO GARCIA,

Defendant and Appellant.

B218364

(Los Angeles County
Super. Ct. No. NA080279)

APPEAL from a judgment of the Superior Court of Los Angeles County. John David Lord, Judge. Affirmed.

Tracy A. Rogers, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

An information filed December 29, 2008, charged appellant Marco Garcia in count 1 with grand theft of an automobile (Pen. Code, § 487, subd. (d)(1), and in count 2 with the unlawful taking or driving of a vehicle (Veh. Code, § 10851, subd. (a)). The trial court heard appellant's discovery motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, seeking disclosure of items bearing on the issues of truth and veracity in the personnel record of the arresting police officers. The court granted the motion with respect to three items in the personnel record of one of the officers, while otherwise denying the motion.

The case was called for trial before a jury on June 11, 2009. The evidence at trial indicates that after Maria Ramirez reported to police that her car had been stolen on the afternoon of November 20, 2009, she later reported that she had located the car in the neighborhood, and had seen appellant Garcia and his girlfriend getting out of it.

Ramirez had not given Garcia permission to use her car at any time. She had let Garcia stay in a room in her home for about a month, but she was in the process of evicting him for failing to pay promised rent and because she suspected him of taking some items from her home. Officer Rodriguez arrested Garcia and advised him of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S. Ct. 1602; 16 L.Ed.2d 694]), after which Garcia admitted taking the vehicle without permission, using a shaved key that the arresting officers found in his pocket.

Garcia's testimony and that of his supporting witnesses was that he had not driven Ramirez's car the day he was arrested, but that in the past he had driven the car with Ramirez's permission, to run errands and to pick Ramirez's children up from school. He denied having told Officer Rodriguez anything different.

On June 17, 2009, the jury returned verdicts of not guilty as to count 1, and of guilty as to count 2. On July 8, 2009, the trial court denied Garcia's motion to reduce the conviction to a misdemeanor, and sentenced Garcia to the high term of three years in state prison "with the understanding that if he returns on 9/1/09 (the surrender date) the court will reduce prison sentence to [the low term of] 16 months." Garcia received credit for 32 days of custody (22 actual plus 10 good time credits); he was ordered to pay a \$20

court security fee, a restitution fine of \$200 per year (which was stayed, with the stay to become permanent upon his successful completion of parole). Garcia was also ordered to make restitution to Ramirez in the amount of \$1,500.

On August 5, Garcia filed Notice of Appeal from the judgment. We appointed counsel to represent Garcia on appeal. After examining the record, on April 1, 2010 counsel filed an opening brief raising no issues and asking the court to make an independent review of the record for appealable issues. On April 7, 2010, this court advised Garcia that he had 30 days within which to submit to the court any contentions or grounds for appeal he wished the court to consider. The court has received no response from Garcia. On April 13, 2010 the court granted appellant's motion to augment the record on appeal to include the transcript of the in camera hearing before the superior court trial court on appellant's *Pitchess* motion.¹

We have conducted an independent review of the record, and have determined that nothing in the record indicates the existence of arguable issues on appeal. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *People v. Wende* (1979) 25 Cal.3d 436, 441.) We therefore will affirm the judgment.

We acknowledge the amendment of Penal Code section 4019, with respect to the manner of determining presentence credits, effective January 25, 2010. (Pen. Code, § 4019, subds. (b) & (c), as amended by Stats. 2009-2010, 3rd Ex. Sess., ch. 28, § 50.) Garcia was sentenced before the effective date of that amendment, however. While the question whether defendants in his circumstance could be entitled to retroactive application of the amendment and redetermination of presentence credits is an issue pending in our Supreme Court (*People v. House*, 183 Cal.App.4th 1049 [111 Cal.Rptr.3d 17], review granted June 23, 2010, S182813), the record does not indicate that Garcia has moved in the trial court for correction of the record, pursuant to Penal Code section

¹ We have reviewed the in camera hearing at which the trial court found that three items from Officer Rodriguez's personnel file could conceivably be relevant to Rodriguez's veracity, and ordered their disclosure in light of Garcia's contention that he had made no admissions to Rodriguez. The record discloses no basis on which to argue that additional items should have been disclosed.

1237.1.² We conclude therefore that unless further proceedings are first undertaken in the trial court, no modification in the sentence to conform to Penal Code section 4019, as amended, is available to Garcia in this forum.

DISPOSITION

The judgment is affirmed.

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CHANEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.

² Penal Code section 1237.1 provides: “No appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction of the record in the trial court.”